

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY SMITH and JEANETTE SMITH,

Plaintiff-Appellants,

v

JILL MONCZUNSKI,

Defendant-Appellee.

UNPUBLISHED

August 4, 2005

No. 260581

Livingston Circuit Court

LC No. 01-018376-NO

Before: Cooper, P.J., and Fort Hood and R. S. Gribbs*, JJ.

COOPER, P.J. (*concurring in part and dissenting in part*).

I agree with the majority's finding that the defendant homeowner was not required to obtain a permit for the electrical work completed by a contractor at her home. However, I must respectfully dissent from the majority opinion of my colleagues. We are not bound by the law of the case doctrine in this instance.

The previous finding was dicta from a motion decided without a full record, not from an opinion of this Court. Generally, the law of the case doctrine is applied "without regard to the correctness of the prior determination."¹ However, the law of the case is not always binding when the prior treatment of an issue amounts to dicta. "Unlike obiter dicta, judicial dicta are not excluded from applicability of the doctrine of the law of the case."² As it was unnecessary for the previous panel to determine whether plaintiff was an invitee for purposes of granting leave to appeal, that finding was obiter dicta.

Based on the facts of this case, it is clear that plaintiff was an invitee. "[T]he owner's reason for inviting persons onto the premises is the primary consideration when determining the visitor's status: In order to establish invitee status, a plaintiff must show that the premises were

¹ *Booker v Detroit*, 251 Mich App 167, 182; 650 NW2d 680 (2002), quoting *Driver v Hanley (After Remand)*, 226 Mich App 558, 565; 575 NW2d 31 (1997), rev'd in part on other grounds 469 Mich 892 (2003).

² *Johnson v White*, 430 Mich 47, 54-55 n 2; 420 NW2d 87 (1988).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

held open for a *commercial* purpose.”³ Plaintiff was invited to defendant’s residence to perform a paid service for defendant’s benefit—remodeling defendant’s home—and, therefore, was an invitee.⁴

Accordingly, I would reverse the trial court’s grant of summary disposition and remand for further proceedings.

/s/ Jessica R. Cooper

³ *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 604; 614 NW2d 88 (2000) (emphasis in original).

⁴ See *Hottmann v Hottmann*, 226 Mich App 171, 175; 572 NW2d 259 (1997) (extending invitee status to a party performing gratuitous work during a home remodeling project as the work was for the benefit of the landowner).